

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

STEPHEN R. BROWN, a single
person,

Plaintiff,

vs.

NEWMAN DU WORS, LLP, a
Washington Limited Liability
Partnership, and; JOHN DAVID DU
WORS, an Individual,

Defendants.

Adversary Proceeding No.

Ch. 13 Case No. 22-bk-40997-BDL

PLAINTIFF'S COMPLAINT
FOR LEGAL
MALPRACTICE AND
OBJECTION TO PROOF
OF CLAIM 3-1

JURY TRIAL DEMAND

The Complaint of Plaintiff Stephen R. Brown alleges as follows:

I. Parties

1.0 Plaintiff STEPHEN R. BROWN (hereinafter "BROWN")
is a person of the full age of majority, who resides in Fox Island, Pierce
County, Washington.

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2 1.1 Defendant JOHN DAVID DU WORS (hereinafter “DU
3 WORS”) is a person of the full age of majority who, on information and
4 belief, resides in King County Washington. At all times relevant herein,
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6 DU WORS was acting within the course and scope of his employment
7 with and/or as principal of NEWMAN DU WORS, LLP.
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9 1.2 Defendant NEWMAN DU WORS, LLP was, at all times
10 relevant herein, a Washington limited liability partnership, with its
11 principal place of business in Seattle, King County, Washington. At all
12 times relevant to this case, defendant NEWMAN DU WORS, LLP was and
13 is jointly and severally liable for the errors and omissions of its
14 employee/principal, DU WORS, as *respondeat superior* and/or pursuant to
15 RCW 18.100.070.
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18 **II. Jurisdiction and Venue**

19 2.0 This Adversary Proceeding is commenced pursuant to Fed. R.
20 Bkrptcy P. 7001, *et seq* and 11 U.S.C. §502(b)(1) and 506(d). Although an
21 objection to a claim with a counterclaim is a core proceeding under 28
22 U.S.C. §157(b)(2)(B) and/or (O), this matter is a non-core claim that lies
23 beyond the scope of the creditor’s proof of claim because a Bankruptcy
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1 Court has no constitutional power to evaluate the debtor's common law
2 tort claims beyond the scope of the creditor's proof of claim and instead
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4 Plaintiff's claims require adjudication by an Article III Court, including
5 pursuant to 28 U.S.C. §157(b)(5).
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7 2.1 Defendant NEWMAN DU WORS, LLP filed Proof of Claim
8 3-1 in the Bankruptcy of Stephen R. Brown, based on services provided to
9 BROWN in the Underlying Matter. NEWMAN DU WORS, LLP thus
10 consented to jurisdiction and venue in this Court.
11

12 2.2 Plaintiff also requests a jury trial relative to his legal
13 malpractice cause of action. Plaintiff does not consent to have the jury
14 issues heard in the Bankruptcy Court and does not waive his right to a jury
15 trial.
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17 2.3 Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.
18

19 **III. Facts**

20 3.0 Plaintiff alleges the following facts on information and belief
21 because Defendant DU WORS has repeatedly failed and refused to provide
22 Plaintiff with Plaintiff's underlying client file, despite request, in violation
23 of DU WORS' duties to Plaintiff.
24
25

1 3.1 Plaintiff BROWN is 28-year veteran of the United States Air
2 Force who retired from the Air Force. BROWN suffers from Post
3 Traumatic Stress Disorder (“PTSD”) that arose in connection with his
4 military service.
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6 3.2 In 2019, Lisah S. Moeling asserted a personal injury claim
7 against BROWN.
8

9 3.3 On or about March 2, 2020, Plaintiff BROWN retained
10 Defendant DU WORS and NEWMAN DU WORS, LLP to represent
11 BROWN in negotiating a settlement and/or defending the personal injury
12 claim asserted against him by Ms. Moegling.
13

14 3.4 Upon accepting representation of BROWN, DU WORS
15 undertook a duty of competence in his clients’ favor to meet or exceed the
16 standard of care expected of a reasonable and prudent Washington attorney
17 representing a client in the same or similar circumstances.
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19 3.5 On July 14, 2014, Moegling filed a Complaint against
20 BROWN in the Pierce County Superior Court case no. 20-2-06886-7
21 entitled *Moegling v. Brown* (hereinafter “the Underlying Matter”).
22

23 3.6 Defendant DU WORS and NEWMAN DU WORS, LLP
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1 thereafter represented BROWN through trial and entry of judgment in
2 the Underlying Matter in August 2022.

3
4 3.7 On or about July 22, 2022, the jury in the Underlying Matter
5 entered a verdict against BROWN in the amount of \$2,580,000.

6
7 3.8 On August 19, 2022, the trial court in the Underlying Matter
8 entered a judgment against BROWN in the amount of the jury's verdict
9 (hereinafter "the Judgment").

10
11 3.9 DU WORS' representation of BROWN in the Underlying
12 Matter fell below the standard of care that DU WORS owed to BROWN
13 in the following respects:

14
15 A. Failing to consult with and/or an retain an appropriate expert
16 witness or witnesses to testify on behalf of BROWN relative
17 to causation and/or damages;

18
19 B. Failing to conduct depositions and/or interviews of Plaintiff
20 Moegling's disclosed witnesses, including failing to depose
21 Plaintiff's expert witness prior to trial;

22
23 C. Failing to identify, interview, depose, or otherwise investigate
24 potential witnesses who should have been interviewed and/or
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1 deposed and/or called to testify at trial;

2 D. Failing to prepare BROWN for his deposition and trial
3
4 testimony, thus creating doubt for the jurors about BROWN's
5 credibility;

6 E. Failing to adequately prepare for trial, including failing to
7 object to Moegling's introduction of inadmissible evidence
8 relating to BROWN's financial circumstances which was
9 extraordinarily prejudicial to BROWN;

10 F. Such other negligent acts and omissions as may be established
11 during discovery and/or at trial.

12 3.10 But for Defendant DU WORS' breaches of the standard of
13 care, the Judgment against BROWN would not have been entered in the
14 Underlying Matter, or, in the alternative, the amount of the Judgment
15 would have been significantly less than the amount awarded against him.

16 3.11 As a direct and proximate result of the jury verdict entered
17 against him, BROWN retained counsel and filed a Chapter 11 bankruptcy
18 reorganization on August 11, 2022 in the United States Bankruptcy Court
19 for the Western District of Washington, case no. 22-40997-BDL entitled
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1 *In re: Stephen Robert Brown* (hereinafter “the Bankruptcy Case”).

2 3.12 But for DU WORS’ breaches of the standard of care and the
3
4 resulting verdict and Judgment against him, BROWN would not have filed
5 the Bankruptcy Case.

6 3.13 As a direct and proximate result of DU WORS’ breaches of
7
8 the standard of care, BROWN suffered the following damages:

- 9 A. Entry of \$2,580,000 verdict and Judgment against him;
10
11 B. Consequential damages incurred as a result of the Judgment
12 again him, including but not limited to the fees and costs
13 of replacement counsel, the fees and costs of bankruptcy
14 counsel and Bankruptcy Court fees, and the financial
15 ramifications of BROWN’s bankruptcy filing;
16
17 C. Fees and expenses paid to Defendants for services that
18 fell below the standard of care;
19
20 D. Such other damages as may be proven through discovery
21 and/or at trial.
22

23 **IV. First Cause of Action: Legal Malpractice**

24 4.0 Plaintiff re-alleges and incorporates by reference every
25

1 allegation set forth in ¶¶1.0-3.13, above, as if fully set forth here.

2 4.1 The representation of BROWN by Defendant DU WORS fell
3 below the standard of care expected of a reasonable and prudent
4 Washington attorney representing clients in the same or similar manner, in
5 the respects described in Complaint ¶3.0-¶3.13, above.
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7 4.2 Defendant DU WORS's breaches of the standard of care
8 proximately caused BROWN damage as described on Complaint ¶3.13,
9 above, including but not limited to the judgment entered against him,
10 whether in whole or in part, fees paid to the defendants for services which
11 failed to mee the standard of care, mitigation expenses (including the costs
12 of replacement counsel and bankruptcy counsel, and consequential
13 damages including embarrassment, emotional distress, and the financial
14 impact of Plaintiff's bankruptcy filing on his creditworthiness.
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16 4.3 Defendant NEWMAN DU WORS, LLP. is jointly and
17 severally liable for the acts and omissions of Defendant DU WORS.
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19 WHEREFORE Plaintiff prays for judgment in his favor and against
20 Defendants DU WORS and NEWMAN DU WORS, LLP, jointly and
21 severally, awarding him the following relief:
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- 1 A. All damages sustained by Plaintiff because of Defendant
2 DU WOR's negligent acts and/or omissions;
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4 B. Legal interest, including pre-judgment interest, on all damages
5 to the fullest extent authorized by Washington law;
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7 C. Reasonable attorney fees to the extent allowed by statute,
8 contract, or other equitable theory authorized by law;
9
10 D. All taxable costs and disbursements;
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12 E. Such other and different relief as the Court may deem just and
13 equitable.

14 **V. SECOND CAUSE OF ACTION: OBJECTION TO**
15 **PROOF OF CLAIM 3-1.**

16 5.0 Plaintiff re-alleges and incorporates by reference every
17 allegation set forth in ¶¶1.0-4.3, above, as if fully set forth here.

18 5.1 Defendant NEWMAN DU WARS, LLP filed Proof of Claim
19 no. 3-1 in the Bankruptcy Case, based on services and expenses alleged to
20 Have been incurred during its representation of BROWN in the Underlying
21 Matter.
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23 5.2 BROWN objects to Proof of Claim 3-1 to the extent it alleges
24 fees and expenses: (a) that violate RPC 1.5 and/or are unreasonable within
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1 the meaning of RPC 1.5; (b) for services not performed or performed for
2 the benefit of Defendants; (c) for services that failed to meet the standard
3 of care owed to BROWN; (d) services that were duplicative and/or
4 incurred to correct errors or omissions of Defendants.
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6 5.3 BROWN further alleges his right to set off the amounts owed
7 him by Defendants on Plaintiff's First Cause of Action against the
8 amounts, if any, determined to be owing to Defendant NEWMAN DU
9 WORS, LLP on its Proof of Claim 3-1.
10

11 WHEREFORE Plaintiff prays for the following relief on his Second
12 Cause of Action:
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- 14 A. Disallow Proof of Claim 3-1 in its entirety or, in the
15 alternative, reduce Proof of Claim 3-1 to reflect the
16 amounts remaining due after determination of Plaintiff's
17 objections and/or set off alleged herein;
18 B. Such other and different relief as the Court may deem just
19 and equitable.
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23 **VI. Jury Trial Demand**

24 6.0 Plaintiff asserts his right under the Seventh Amendment to
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1 the U.S. Constitution and demands, in accordance with Fed. R. Civ. P. 38,
2 a trial by jury on all issues relating to his First Cause of Action.
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4 DATED: January 4, 2023.

5 WAID LAW OFFICE, PLLC
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7 BY: /s/ Brian J. Waid
8 BRIAN J. WAID
9 WSBA No. 26038
10 Attorney for Plaintiff
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